STATE OF MICHIGAN

COURT OF APPEALS

MICHELLE CRAIG, Plaintiff-Appellant,	UNPUBLISHED January 24, 2012
v	No. 303416 Clinton Circuit Court
LARS ANDERSEN, D.O., and CLINTON COUNTY MEDICAL CENTER, P.C., Defendants-Appellees.	LC No. 10-010777-NH

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals the trial court order granting summary disposition to defendants on the basis of the statute of limitations. MCR 2.116(C)(7). We affirm.

Plaintiff brought this action on November 29, 2010, seeking recovery for defendant Lars Andersen's alleged failure to discover and treat plaintiff's addiction to prescription pain medications. Dr. Andersen, plaintiff's family practice physician, practiced with defendant Clinton County Medical Center. He prescribed the narcotic opiate Vicodin (Hydrocodone) from August 2004 to November 2007 to treat plaintiff's rheumatoid arthritis and other complaints of pain. Previously, plaintiff had seen Dr. Niti Thakur for rheumatoid arthritis, and Dr. Thakur prescribed Vicodin and other drugs. Dr. Thakur and other physicians also prescribed various painkillers to plaintiff during the time that Dr. Andersen was prescribing Vicodin. Plaintiff alleged that Dr. Andersen missed obvious signs of her addiction, including on the last date she saw Dr. Andersen for abdominal pain on June 9, 2009.

Defendants denied negligence and malpractice and asserted that the statute of limitations barred plaintiff's claim. Defendants argued that the two-year statute of limitations for medical malpractice, MCL 600.5805(6), expired on November 14, 2009, which was two years after the last date Dr. Andersen prescribed Vicodin to plaintiff. Further, defendants asserted that plaintiff did not satisfy the six-month discovery rule of MCL 600.5838.

The trial court granted summary disposition to defendants, finding that the statute of limitations barred plaintiff's claim. The court held that plaintiff knew of a possible cause of action and causal connection between her injuries and defendants' alleged negligent prescribing.

This was shown by plaintiff's answers and writings while in Narconon, a Georgia addiction treatment facility.

On appeal, we review de novo issues of law, statutory construction, and rulings on summary disposition. *Kuznar v Raksha Corp*, 481 Mich 169, 175; 750 NW2d 121 (2008); *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 566-567; 702 NW2d 539 (2005).

The statute of limitations for medical malpractice is two years from the date the claim accrued. MCL 600.5805(1), (6); *Farley v Advanced Cardiovascular Health Specialists PC*, 266 Mich App 566, 571; 703 NW2d 115 (2005). Here, plaintiff did allege a breach of the standard of care for the June 9, 2009 visit and that defendant should have recognized, intervened, and treated plaintiff's substance dependency. Plaintiff's Notice of Intent and Affidavit of Merit also referred to the alleged duty to make such conclusions and claimed breaches by Dr. Andersen. In any event, defects in the Notice of Intent operate to toll the statute of limitations, especially where such defects are minor. *DeCosta v Gossage*, 486 Mich 116, 118, 125; 782 NW2d 734 (2010). Here, plaintiff's last visit to Dr. Andersen in June 2009 was for an unrelated condition, abdominal pain. As noted, Dr. Andersen had not prescribed Vicodin or other narcotics since November 14, 2007. Plaintiff failed to explain sufficiently or offer evidence on why it should have been "obvious to any reasonable doctor" that, as of June 2009, she was suffering from addiction to prescription painkillers. On that date, Dr. Andersen's notes described plaintiff as "in good health, well-groomed, good hygiene, ambulatory, able to give accurate history."

Defendants correctly note that Michigan does not recognize the doctrine of continuing wrongs. Alleged ongoing deficiencies in diagnosis and treatment do not constitute separate acts that create new accrual dates. *McKiney v Clayman*, 237 Mich App 198, 202-204; 602 NW2d 612 (1999). An ongoing physician-patient relationship by itself does not extend the accrual date beyond the specific negligent act or omission charged. *Id*. at 203. Aside from a continuing wrong analysis, plaintiff has not presented a cogent theory to utilize the June 2009 treatment date as a date of accrual of her action against defendants.

Plaintiff further argues that the trial court misapplied the six-month discovery rule. This rule provides in MCL 600.5838(2) that an action for malpractice may be instituted within six months after the plaintiff discovers or should have discovered the claim. The plaintiff bears the burden of proving that she neither discovered nor should have discovered the claim at least six months before the expiration of the statute of limitations period. In *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 232; 561 NW2d 843 (1997), the Court held that the discovery rule period begins to run "when the plaintiff is aware of an injury and a possible causal link between the injury and an act or omission of the physician."

In the case at bar, plaintiff argues that there was no showing that she was aware of the requisite causal connection within the six-month discovery period. We disagree. The evidence showed that plaintiff not only was aware of her addiction but felt it was caused by doctors overprescribing medications to her, and she was contemplating legal action because of it. While being treated at the Narconon facility, plaintiff "possess[ed] at least some minimum level of information that, when viewed in its totality, suggest[ed] a nexus between the injury and the negligent act." *Solowy*, 454 Mich at 226. Here, defendants presented documentary evidence showing that plaintiff was aware of a possible claim that Vicodin and other prescribed pain

medications had led to her addiction. It is immaterial that plaintiff referred to pursuing a possible legal action against a female doctor (presumably Dr. Thakur) on her December 16, 2009 Narconon Daily Report Form. As of this date, and earlier, when admitted to the facility, she knew that Drs. Thakur and Andersen, and others, had prescribed opiate pain medications. The trial court found that plaintiff "not only should have known, but in fact did know that she was going into this addiction program because she was hooked on Vicodin and Oxycodone." The documentary evidence produced in support of defendants' motion for summary disposition showed that plaintiff was aware of a causal connection, and plaintiff failed to produce any contradicting evidence that would show a genuine issue of material fact.

Plaintiff argues, nevertheless, that as a matter of law, her impaired mental state negated the ability to discover the causal connection to satisfy the discovery rule. However, plaintiff does not rely on the insanity provision of MCL 600.5851(1), which would allow a plaintiff an extra year to bring a cause of action after the disability of insanity is removed. See MCL 600.5851(4); *Lemmerman v Fealk*, 449 Mich 56, 70-73; 534 NW2d 695 (1995). Plaintiff cites no applicable authority supporting a "clouded mental state" exception. In this case, Narconon records showed that plaintiff was clear-headed and able to think and reason adequately, despite being treated for narcotics addiction. Dr. Andersen's own records as of June 2009 suggested the same conclusion. The trial court did not clearly err in finding plaintiff's action to be time-barred.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Douglas B. Shapiro